

THE ANSCHUTZ CORP.

IBLA 77-403

Decided March 31, 1978

Appeal from three decisions of the New Mexico State Office, Bureau of Land Management, rejecting in part appellant's noncompetitive geothermal lease offers, NM 20641, NM 20642, and NM 20643.

Affirmed.

1. Geothermal Leases: Discretion to Lease—Geothermal Leases: Environmental Protection: Generally

An exercise of the Secretary's discretion by Bureau of Land Management State Office to refrain from issuing a geothermal lease for a given tract of land will be sustained where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest.

APPEARANCES: Miles A. Williams, Vice President, The Anschutz Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from three decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive geothermal resources lease applications (NM 20641, NM 20642, and NM 20643) as to a portion of the lands described therein. 1/ The BLM cited as the reason for the partial rejection of each of the offers the fact that those areas rejected constitute "lands \* \* \* needed to protect the scenic and natural wonder in and around the Mineral Springs area."

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1/ Certain other lands embraced in lease offer NM 20643 were also rejected because they had been previously withdrawn as a part of the Zia Indian Reservation. Appellant has not appealed this part of the decision.

Appellant's statement of reasons for appeal disputes the value of the subject land as scenic and natural wonder, asserting that the land consists of dry, eroded desert badlands not conducive to human or animal habitation. Appellant further asserts that the land has little aesthetic value, and lands with more vegetation and aesthetic value have been leased. Geothermal leases have been issued or are scheduled for issuing for nearby tracts. Further, appellant contends that adequate protective measures for the environment may be achieved through special stipulations. Finally, appellant contends that the rejection of part of each of these applications leaves only a peripheral land position which is economically disadvantageous and which would tend to stifle interest in geothermal exploration.

Statutory authority for the leasing of geothermal resources is provided by the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1025 (1970). The statute provides that the Secretary of the Interior "may" issue geothermal resources leases. 30 U.S.C. § 1002 (1970). Thus, the decision of whether or not to issue a geothermal lease for a given tract of land is within the discretion of the Secretary. Earth Power Corporation, 29 IBLA 37, 41 (1977); Eason Oil Company, 24 IBLA 221, 223 (1976).

Although the decisions below fail to mention the fact, it is clear from the case records that the partial rejection of each of the lease applications for certain lands in the Mineral Springs Area is based on the findings of an environmental analysis record 2/ compiled in anticipation of geothermal leasing over a wide area of Sandoval County, New Mexico. This report contains a detailed analysis of the existing environment throughout the area. One method of analysis employed is the BLM's Recreation Information System (RIS) which is utilized to analyze the area in terms of various recreation values. The Mineral Springs Area ranked very high in the evaluation for sightseeing for both scenery and geological formations, as well as natural and primitive values (EAR, Appendix L). Study of the geology of the region and recreational values resulting therefrom led to a finding that the Mineral Springs Area is an "extremely unique resource" unlike much of the area studied (EAR, 120).

The anticipated impact of the four major stages of development of geothermal resources (exploration, development, production, and close-out) is dealt with in some depth in the EAR. The danger of a significant adverse impact on the environment from geothermal development is noted:

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2/ Technical Report and Environmental Analysis Record for Proposed Geothermal Leasing of Cabezón, San Ysidro, and Santa Ana Mesa County (EAR No. NM-010-6-254 (G, P)) (hereinafter cited as EAR.)

Of particular concern, the Mineral Springs Area \* \* \* could experience severe scenic loss if development and production [occur] at significant levels in the area. Potential [effects] could include loss of active water formations resulting in alteration of the Spring's overall appearance. Subsidence could also occur in the springs area that could drastically affect the scenic values of the resource.

EAR, 171.

Suggested measures to mitigate this impact are also discussed in the EAR. One measure considered is the exclusion from geothermal development of those areas rated highest in the RIS for scenic or primitive values (EAR, 192). Finally, the recommendation is made in the EAR that certain lands not be leased in order to protect the Mineral Springs Area (EAR, 196). The lands for which appellant's applications were rejected fall within this area.

[1] As a general rule, a decision by the BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be the result of a reasoned analysis of the factors involved and that the decision is based upon considerations of public interest. Southern Union Production Company, 27 IBLA IBLA 54, 56 (1976); Eason Oil Company, *supra* at 224. It is not the function of this Board to substitute its judgment for that of the technical experts employed by the Department except where plain error is perceived. Eason Oil Company, *supra* at 225. As we stated in Rosita Trujillo, 21 IBLA 289, 291 (1975), involving an appeal from a partial rejection of an offer for an oil and gas lease on grounds of environmental protection:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

It is clear from the case records and from the EAR, which is a matter of public record, that the decisions were based on the detailed study reported in the EAR and the recommendations contained therein which were based on that study. The decisions are consistent with the study and recommendations. No basis has been established for setting aside the decisions below.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Joseph W. Goss  
Administrative Judge

We concur.

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Martin Ritvo  
Administrative Judge

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Frederick Fishman  
Administrative Judge

